United States Court of Appeals

for the Second Circuit

BRIEF FOR APPELLEE

76-7387

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

----------x

MILLAR ELEVATOR INDUSTRIES, INC.,

Plaintiff-Appellant,

vs.

LOCAL UNION NO. 3, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, THOMAS VAN ARSDALE, individually and as Business Manager of Local 3, JAMES O'HARA, individually and as Asst. Business Manager of Local 3, JOHN KROMER, individually and as Business Representative of Local 3, "JOHN DOE", "JAMES SMITH", and "JANE ROE",

Defendants-Appellees,

and

LOCAL 1, INTERNATIONAL UNION OF ELEVATOR CONSTRUCTORS,

Intervenor-Appellee.

----------x

DISTRICT COURT
DOCKET # 76-Civ. 1441
(JW)

B

P/S

BRIEF ON BEHALF OF LOCAL 1
INTERNATIONAL UNION OF
ELEVATOR CONSTRUCTORS,
INTERVENOR-APPELLEE

Markowitz & Glanstein
50 Broadway
New York, N.Y. 10004

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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MILLAR ELEVATOR INDUSTRIES, INC.,

Plaintiff-Appellant,

vs.

DISTRICT COURT
DOCKET #76 Civ. 1441
(JW)

LOCAL UNION NO. 3, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, THOMAS VAN ARSDALE, individually and as Business Manager of Local 3, JAMES O'HARA, individually and as Asst. Business Manager of Local 3, JOHN KROMER, individually and as Business Representative of Local 3, "JOHN DOE", "JAMES SMITH", and "JANE ROE",

Defendants-Appellees,

and

LOCAL 1, INTERNATIONAL UNION OF ELEVATOR CONSTRUCTORS,

Intervenor-Appellee.

----------x

BRIEF ON BEHALF OF LOCAL 1, INTERNATIONAL UNION OF ELEVATOR CONSTRUCTORS, INTERVENOR-APPELLEE

Richard H. Markowitz
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9436/4

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I. STATEMENT OF THE CASE

This is an appeal by Milla- Elevator Industries, Inc. (hereinafter referred to as Employer) from the dismissal of its complaint and the denial of its request for a preliminary injunction by the court below. The Employer sought injunctive relief against Local 3, International Brotherhood of Electrical Workers (hereinafter referred to as Appellee) because of the refusal of 2 of its 185 employees to perform certain particular duties on an elevator modernization job at the Hotel Plaza in New York.

Local 1, International Union of Elevator Constructors (hereinafter referred to as Intervenor-Appellee) was permitted to intervene in this matter by the court below. The basis for its intervention was that the work in question being performed by the Employer's 2 employees was awarded to members of Intervenor-Appellee by the arbitration procedure governing the two unions and maintained by the Building Trade Employers Association of the City of New York.

The Employer is a party to a collective bargaining agreement with Appellee (Plaintiff's Exhibit 1). That agreement contains a prohibition of strikes and work stoppages. It also contains a "Grievance Procedure" which provides that

> "...when an employee has a difference or dispute as to the interpretation or application of any provision of this Agreement, there shall be no suspension of work on account of such difference, but an earnest effort shall be made to settle the question immediately by means of the procedure herein described, and no other method of adjustment will be resorted to."

It is further provided that "Any grievance arising out of a difference or dispute as to the interpretation or application of any provision of this Agreement" may be submitted to arbitration.

The Employer has an contract to convert and modernize certain elevators at the Plaza Hotel (Transcript, pp. 5, 6). On a Friday in August, 1976, the Employer's President was notified by the Appellee that its members "no longer could work" on two of the many elevators under the Employer's contract (Tr. p. 8). Two of the Employer's employees then stopped work on these elevators, and they were put to work by the Employer on other elevators (Tr. pp. 8, 9, 16, 17). All of the Employer's 185 employees are working without interruption except that two employees refused to work on these elevators (Tr. p. 17).

The reason why the two employees ceased work on these two elevators is set forth in the Affidavit of John Kromer, Business Representative of Appellee.* Appellee and Intervenor-

*Because we are not certain that the Record in this case contains this Affidavit, we are attaching a copy to this Brief. The Affidavit was handed to, and considered by Judge Weinstein. We submit it is of critical importance in this case, and particularly its attached Exhibit A, since it sets forth the basis of the dispute and the claim of Intervenor-Appellee.

Appellee are parties to an arbitration procedure to hear and determine disputes between unions. That machinery is operated by the Building Trades Employers' Association of the City of New York (BTEA).

As set forth in the Affidavit of John Kromer, Intervenor-Appellee filed a claim to work on certain elevators at the Plaza Hotel.* The claim was heard by the BTEA at a hearing in which both unions participated. On July 27, 1976, the BTEA issued its decision which states as follows:

> "This is to inform you that the Executive Committee rendered the following decision:
>
> 112-5g
>
> --New Elevator, using existing rails, installation of
>
> Elevator Constructors Union, Local 1 and Electrical Workers Union, Local 3 -- Plaza Hotel, New York City, New York.
>
> The Executive Committee finds that the referenced installation, elevators 5, 6, 7 and 8, is covered by Decision 112-4g and is, therefore, the work of the Elevator Constructors Union, Local 1. -- Decision of the Executive Committee, July 27, 1976."

This decision, binding on Appellee, gives rise to the events of this case.

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*The Affidavit of John Kromer contains two typographical errors in referring to the filing of this claim by Intervenor-Appellee in April, 1975 and its reference to the BTEA in June, 1975. These events occurred in 1976, rather than 1975.

At the hearing before the court below, the President of the Employer could not point to any specific or irreparable harm resulting to it. He was concerned with "serious consequences" from the Plaza (Tr. p. 13). But time was not of the essence in his contract (Tr. p. 14), and his employees are still working (Tr. p. 17). Moreover, he admitted that members of Intervenor-Appellee had the skills to perform this work (Tr. p. 21).

The court below issued an oral opinion at the conclusion of the hearing on August 12, 1976. He found that the grievance procedure "is not applicable here because the employees have no grievances. They are not complaining about anything." (Tr. p. 26). He then said:

> "As I read the agreement, this is not an arbitrable dispute. It may well be a violation of an agreement on behalf of the union official in which case there is a possibility for a claim of damages against the union and there may well be a basis to discharge the employees involved because they arguably violated the strike agreement. But, I don't see how arbitration fits into this." (Tr. pp. 26, 27).

The court below granted a stay of the previously issued temporary restraining order pending application to this Court. This appeal followed.

II. ARGUMENT

A. Introduction

This case hinges upon the principles laid down by the Supreme Court in Buffalo Forge Co. v. United Steelworkers of America, ' US , 96 S. Ct. 3141 (July 6, 1976). There the Supreme Court affirmed this Court, 517 F.2d 1207, and held that the fact that the issue whether a strike violated a no-strike clause was arbitrable did not provide the basis for an injunction against the strike.

The Court in Buffalo Forge limited the scope which some Courts of Appeals, but not this Court, had given to Boys Markets, Inc. v. Retail Clerks Union, 398 US 235 (1970). It held that a strike which "was not over any dispute between the union and the employer that was even remotely subject to the arbitration provisions of the contract" could not be enjoined. 96 S. Ct. at p. 3147. Under such circumstances, Section 4 of the Norris LaGuardia Act, 29 USC 104, prevented the issuance of an injunction.

In the instant case, there is no contractual dispute between the Employer and Appellee. An arbitration award has directed Appellee that it is not entitled to perform certain work. No employee of the Employer has raised a grievance or dispute which is subject to arbitration under the contract. The refusal to work did not occur because of or over a dispute or grievance

which could be submitted to arbitration. The Court below was correct in denying an injunction.

B. The Employer Is Not Entitled To An Injunction.

In Boys Markets, supra, the Supreme Court held that the terms of Section 4 of the Norris-LaGuardia Act, 29 USC 104, should be accommodated to the federal policy favoring arbitration. In its "narrow" holding the Court said that an injunction was proper when the following conditions were met.

1. The collective bargaining agreement contained a no strike and arbitration clause.
2. The strike resulted from and was over a grievance or dispute subject to arbitration under the contract.
3. The injunction was warranted under ordinary principles of equity.
4. The employer should be ordered to arbitrate the dispute which gave rise to the strike.

Only when these conditions were met were the provisions of Section 4 of the Norris-LaGuardia Act ineffective to prevent the issuance of an injunction.

Subsequent to Boys Markets the Courts of Appeals divided on the question of whether a strike which was not over a grievance arising

under the contract could be enjoined. See Buffalo Forge, supra, footnote 9, 96 S. Ct. at p. 3145. This Court in Buffalo Forge held that a strike which was not "over a grievance which the union has agreed to arbitrate" could not be enjoined. id, 517 F2d at p. 1210. To resolve this conflict the Supreme Court granted certiorari in Buffalo Forge.

The Supreme Court affirmed this Court's analysis. It held that the mere existence of a strike in violation of a contract was not enough to warrant a Boys Markets injunction. The Court said

> "The allegation of the complaint that the Union was breaching its obligation not to strike did not in itself warrant an injunction. As was stated in the Sinclair dissent embraced in Boys Markets:
>
> > "(T)here is no general federal anti-strike policy; and although a suit may be brought under § 301 against strikes which, while they are breaches of private contracts, do not threaten any additional public policy, in such cases the anti-injunction policy of Norris-LaGuardia should prevail." Citing Sinclair Refining Co. v. Atkinson, 370 US 195, at p. 225. 96 S. Ct. at p. 3148

In the instant case there is no dispute between the Employer and the Appellee which is subject to arbitration. The refusal to work stemmed from Appellee's attempt to abide by the dispute settlement procedure established to resolve competing claims to work between unions. Such a refusal to work is not "over any dispute between the Union and the employer" which was subject to arbitration. 96 S. Ct. at p. 3147.

The collective bargaining agreement (Plaintiff's Exhibit 1) provides for arbitration of differences or disputes as to the interpretation or application of provisions of the agreement, which dispute has not been settled in the grievance procedure. The grievance procedure set forth in Article XI of Plaintiff's Exhibit 1, provides that a grievance arises "when an employee has a difference or dispute as to the interpretation or application of any provision of this Agreement."

The refusal to work in this case does not arise from any difference or dispute as to the interpreation or application of the collective bargaining agreement. This is not a case where an employee has made a claim under the contract which could be submitted to arbitration. There is simply nothing to arbitrate between the Employer and the Appellee since no claim has been made by any employee and the refusal to work does not arise because of any such claim.

This factor distinguishes the cases cited by the Employer. For example, in Avco v. Local 787 UAW, 459 F2d 968 (3d Cir. 1972) the dispute was subject to arbitration and covered by the broad grievance procedure of the contract. In the contract involved here only an employee can submit a grievance which is subject to arbitration and no employee has done so.*

*Avco was decided before Buffalo Forge. It should be pointed out that the interpretation of Boys Markets by the Court of Appeals for the Third Circuit was rejected in Buffalo Forge.

To put it very simply, there is nothing here to arbitrate. There is no dispute between the Employer and the Appellee except over the refusal of approximately 1% of the Employer's work force to work on 2 elevators. Buffalo Forge makes clear that such a dispute does not justify the disregard of Section 4 of the Norris-LaGuardia Act.

We are sure that there is no serious dispute that this case arises out of a labor dispute within the meaning of the Norris-LaGuardia Act. Section 4 of that statute plainly states that "No court of the United States shall have jurisdiction to issue any ....injunction in any case involving or growing out of any labor dispute" which injunction, inter alia, prohibits any person from ceasing or refusing to perform work. Under the principles of Buffalo Forge, Section 4 of the Norris-LaGuardia Act squarely prevents the issuance of an injunction in this case.

An interesting corollary to the instant case is the decision of this Court in Drywall Tapers and Pointers of Greater New York, et al vs. Operative Plasterers, et al. F. 2d (2d Cir. June 18, 1976, No. 76-7108)*. There, without regard to no strike clauses, this Court affirmed the issuance of an injunction against the Plasterers from the performance of certain

*A copy of this Court's opinion in that case is attached to Appellee's Brief.

work in dispute between the two unions.

In the instant case there is an agreement between Appellee and Intervenor-Appellee to resolve disputes by the arbitration procedures of the BTEA. The parties followed this procedure and a decision was rendered in favor of Intervenor-Appellee (see Exhibit A, Affidavot of John Kromer). If Intervenor-Appellee had sued Appellee to enforce this agreement and decision, under the principles of the Drywall Tapers case, an injunction would have been issued against Appellee preventing its performance of this work.

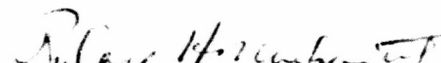
Finally, although the issue was not determined by the court below, it should be noted that the Employer has not established any basis for a finding that it has suffered, or is suffering irreparable harm. All of its employees are working. Its President admitted that members of Intervenor-Appellee could perform the work which members of Appellee refused to perform. Under general principle of equity, the Employer is not suffering any irreparable harm and is not entitled to injunctive relief.

III. CONCLUSION

We submit that the principles of Buffalo Forge clearly and indisputably prevent the issuance of an injunction in this case. There is no strike or work stoppage arising from or over a claim, grievance or dispute which is subject to arbitration under the collective bargaining agreement between the Employer and Appellee.

Under such circumstances, the Norris-LaGuardia Act is squarely applicable and no injunction could be issued. The Court below was eminently correct in denying the relief requested and dismissing the complaint.

Respectfully submitted,



Richard H. Markowitz
Markowitz & Glanstein
Attorneys for Intervenor-Appellee

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

----------X

MILLAR ELEVATOR INDUSTRIES, INC.,

Plaintiff,

- against -

LOCAL UNION NO. 3, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, THOMAS VAN ARSDALE, individually and as Business Manager of Local 3, JAMES O'HARA, individually and as Asst. Business [Manager] of Local 3, JOHN KROMER, individually and as Business Representative of Local 3, "JOHN DOE", "JAMES SMITH", and "JANE ROE",

Defendants.

----------X

76 CIV 1441

AFFIDAVIT IN OPPOSITION TO PLAINTIFF'S APPLICATION FOR TEMPORAR RESTRAINING ORDER AND PRELIMINARY INJUNCTION

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

JOHN KROMER, being duly sworn, deposes and says:

1. I am a Business Representative of defendant, Local Union No. 3, International Brotherhood of Electrical Workers, AFL-CIO, who informed the Plaintiff and its employees on July 29, 1976 that the Union's members would not work on elevators 5, 6, 7 and 8 at the Plaza Hotel. I make this affidavit in opposition to the Employer's application for injunctive relief.

2. The Defendant Union is a labor organization some of whose members perform repair and maintenance work on elevators in the New York area. Local No. 1 of the International

Union of Elevator Constructors is a labor organization which performs installation work on elevators in the New York area. Both unions are members of the New York City Building and Construction Trades Council.

3. On or about April 2, 1975, Local No. 1 filed a complaint with the Building and Construction Trades Council alleging that the work being performed by Plaintiff's employees, members of Defendant Union, on elevators 5, 6, 7, and 8 at the Plaza Hotel should be performed by persons represented by Local No. 1. On or about June 13, 1975, the Building and Construction Trades Council referred both unions to the Building Trades Employers' Association (BTEA). Pursuant to the machinery of the Building and Construction Trades Council, BTEA was empowered to hear and determine jurisdictional disputes between the unions belonging to the Building and Construction Trades Council.

4. On or about July 27, 1976, after hearing both unions, BTEA issued a decision which provided that the work on elevators 5, 6, 7 and 8 belongs to Local No. 1. Said decision is attached and marked Exhibit A.

5. In obedience to the mandate of BTEA, Defendant Union advised Plaintiff that its employees would cease to perform any work on elevators 5, 6, 7, and 8 at the Plaza Hotel.

6. Defendant Union believes that its obedience to

the mandate of BTEA is consistent with its obligations under the Collective Bargaining Agreement to perform whatever work is within its jurisdiction.

7. The Plaintiff employs approximately 135 elevator mechanics represented by Defendant Union. The two employees who are refusing to work on the above enumerated elevators, upon information and belief, are performing other work for the Plaintiff. Our work at the Plaza Hotel has been continuing for nearly two years. The mechanics work on only one elevator at a time in each elevator bank, so that elevator service remains unimpeded. It therefore does not appear that the Plaintiff is involved in any emergency situation requiring the intervention of this Court.

8. The Collective Bargaining Agreement's Arbitration Clause Does Not Apply To This Situation. The Collective Bargaining Agreement's grievance procedure and arbitration clause, Articles XI and XII, apply to grievances by employees only, and do not apply to grievances by employers. The grievance procedure, Article XI, makes no mention of grievance by employers and refers only to grievances by employees. The Arbitration Clause in pertinent part reads:.

> "Any grievance arising out of a difference or dispute as to the interpretation or application of any provision of the Agreement which has not been satisfactorily settled through the grievance procedure prescribed herein, shall be referred to a Board of Arbitration consisting of three (3) men.
>
> ***
>
> The Board of Arbitration shall not by

any decision or award either add to or subtract from any of the terms or conditions of this Agreement."

Neither the Union or any employee has any grievance against the Plaintiff. The Plaintiff feels aggrieved by the action of the Union. The grievance machinery set forth in Article XI does not apply to this situation. The Arbitration Clause covers only a grievance"which has not been satisfactorily settled through the grievance procedure prescribed herein" and therefore cannot apply to this grievance by the Employer.

9. The Union's Abandonment Of All Work On Elevators 5, 6, 7, and 8 Is Not A Strike. During my lifetime in the labor movement, I have learned that a strike is a work stoppage engaged in as a form of economic coercion to force the employer to comply with the union's demands. We have made no demands upon the Plaintiff connected with the refusal to perform work on elevators 5, 6, 7, and 8. My attorney, Donald F. Menagh, Esq advises me that this is a case of first impression, that never before to his knowledge has a judge been asked to enjoin a union's abandonment of work not connected with any demand, as a"strike", and that no court has ever called such abandonment of work a "strike" or ever has issued injunction against such abandonment of work.

10. The Employer Itself Has Failed To Employ The Contract's Arbitration Machinery. Even if the Union's refusal to work on elevators 5, 6, 7 and 8 were a strike, and even if

such strike constituted a grievance which the contract provided should be resolved by arbitration, there is no arbitrator available to resolve the matter. The Plaintiff has not taken the procedural steps provided in the grievance and arbitration clauses (Articles XI and XII) which eventually result in the designation of a Chairman of the Board of Arbitration. Since it is the Employer which claims to be aggrieved, it is the Plaintiff and not Defendant Union that must seek the arbitration and take whatever procedural steps may be available to it.

11. This Court Should Not Order The Union To "Submit To Arbitration". The Employer has asked this Court to order the Union to "submit to arbitration any and all disputes it may have as to the scope of the work covered by the Collective Bargaining Agreement". The Union believes that there is no dispute here which should be arbitrated or which is covered by the contract's arbitration clause. I am advised by my attorney that the Employer's Memorandum of Law does not cite any authority for the imposition of a court order that either an employer or a union must waive any legal argument it may have in support of its contention that a matter is not subject to arbitration and that no court ever has ordered a union to abandon its legal argument with respect to arbitrability of a dispute.

12. The Collective Bargaining Agreement Does Not Provide For Arbitration Relating To Strikes. Even if the Union's refusal to work on elevators 5, 6, 7, and 8 did

constitute a strike, the Collective Bargaining Agreement does not provide for arbitration as a remedy. The contract's No-Strike Clause, Article XV, in pertinent part reads:

> "(b) That there shall be no strike of any kind***. Any violation (1) on the part of the Union officials shall constitute a breach of this Agreement or (2) on the part of any employee, whether or not an official of the Union, shall constitute just cause for disciplinary action, which may include discharge."

Nowhere does the No-Strike Clause state that the Arbitration Clause is applicable to strikes.

13. It Appears That The NLRB Has Jurisdiction Here. I am informed that during the last days of June, 1976 a Mr. Connolly, a Business Representative of Local No. 1, visited the premises of the Plaza Hotel and during the course of his conversations, with specific reference to elevators 5, 6, 7, and 8, discussed the effect of labor difficulties at the Plaza Hotel if Local No. 1 were not given the installation work on said elevators. I am advised by my attorney, Donald F. Menagh, Esq. that any conversation of a coercive nature designed to require the assignment of work to employees in one union or craft rather than another union or craft gives rise to a jurisdictional dispute within the meaning of 58(b)(4)(D) of the Taft-Hartley Act. I am further advised that if such charge is filed with Region 2 of the NLRB, the Regional Director, if she has reason to believe the charge true, would be obligated promptly

to apply for preliminary injunctive relief to the United States District Court for the Southern District of New York--whether or not the coercion were successful and whether or not the Union engaged in picketing.

14. The Harm To Defendant Union If Its Members Resumed Work At Elevators 5, 6, 7, and 8 Would Exceed The Harm To The Plaintiff Caused By The Refusal To Perform That Work. As stated in Yale Citrin's moving affidavit, the Employer has been working on the Plaza Hotel elevators since November, 1974. Its work is far from complete. Since only one elevator at a time was worked on in each elevator bank, including elevators 5, 6, 7, and 8, the sense of haste, emergency and imminent disaster which the Plaintiff seeks to convey to this Court through its legal papers is unjustified.

15. Local Union No. 3 cannot properly function as a building trades union in New York City unless we comply with the grievance machinery for settlement of jurisdictional disputes established by the New York City Building and Construction Trades Council. Defendant Union therefore must comply with the order of BTEA, Exhibit A. On October 1, 1973 because we refused to comply with a prior order of BTEA, Local Union No. 3 was suspended from membership in the New York City Building and Construction Trades Council. Local Union No. 3's recent reinstatement was accompanied by an understanding that Local Union No. 3 would comply with all valid decisions of the Building

Trades Employers' Association arrived at pursuant to the Jurisdictional Disputes Settlement Procedure of the Building and Construction Trades Council of Greater New York.

16. If the refusal of two employees to perform work on an elevator did constitute a strike, it would hardly be the type of strike which would justify the finding that the Employer has suffered irreparable harm and would justify the imposition of injunctive relief by this Honorable Court.

John Kromer

Sworn to before me this
10th day of August, 1976

Eileen B. Russell
Notary Public

EILEEN B. RUSSELL
Notary Public, State of New York
No. 03-2405060
Qualified in Bronx County
Commission Expires March 30, 1977

BUILDING TRADES EMPLOYERS' ASSOCIATION
OF THE CITY OF NEW YORK

711 THIRD AVENUE
NEW YORK, N. Y. 10017
AREA CODE 212
697-2850

ARTHUR T. GAFFNEY
PRESIDENT
JAMES M. WATTERS, JR.
VICE PRESIDENT
LESLIE V. SHUTE
SECOND VICE PRESIDENT
JOSEPH P. CLARKE
THIRD VICE PRESIDENT

H. EARL FULLILOVE
CHAIRMAN, BOARD OF GOVERNORS
THOMAS F. CARTY
TREASURER
WILLIAM A. CANAVAN
SECRETARY

July 27, 1976

Mr. Thomas Van Arsdal Business Manager
Electrical Workers Local Union No. 3
158-11 Jewel Avenue
Flushing, N.Y. 11365

Dear Mr. Van Arsdale:

This is to inform you that the Executive Committee rendered the following decision:

112-5g

--New Elevator, using existing rails, installation of

Elevator Constructors Union, Local 1 and Electrical Workers Union, Local 3 -- Plaza Hotel, New York City, New York.

The Executive Committee finds that the referenced installation, elevators 5, 6, 7 and 8, is covered by Decision 112-4g and is, therefore, the work of the Elevator Constructors Union, Local 1. -- Decision of the Executive Committee, July 27, 1976.

Very truly yours,

William A. Canavan
Secretary

WAC:mb

EXHIBIT A

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August 18, 1976

Clerk
United States Court of Appeals
for the Second Circuit
United States Courthouse
Room 1702
Foley Square
New York, New York 10007

Attention: Edward Guardaro

Re: Millar Elevator Industries, Inc., Plaintiff-Appellant, v. Local Union No. 3, International Brotherhood of Electrical Workers, et al., Defendants-Appellees, and Local 1, International Union of Elevator Constructors, Intervenor-Appellee - District Court Docket # 76 Civ. 1441 (JW)

Dear Mr. Guardaro:

Enclosed please find six (6) copies of a Brief which we are filing on behalf of the Intervenor-Appellee in the above matter. As you are aware, this case is listed for argument on Friday, August 20, 1976 before Judges Van Graafeiland, Kelliher and Gagliardi.

Copies of the enclosed Brief have been served upon counsel for the Employer and counsel for the Appellee.

Very truly yours,

Richard H. Markowitz

RHM:ac
Enc.
cc: Carl Schwarz, Esquire
Norman Rothfeld, Esquire